



New South Wales

Children (Criminal Proceedings) Amendment (Committals and Guilty Pleas) Regulation 2018

under the

Children (Criminal Proceedings) Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Criminal Proceedings) Act 1987*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to amend the *Children (Criminal Proceedings) Regulation 2016* to prescribe the forms of oral and written explanations to be given to accused persons before the commencement of committal proceedings in the Children's Court.

This Regulation is made under the *Children (Criminal Proceedings) Act 1987*, including sections 31L and 51 (the general regulation-making power).

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Children (Criminal Proceedings) Act 1987

1 Name of Regulation

This Regulation is the *Children (Criminal Proceedings) Amendment (Committals and Guilty Pleas) Regulation 2018*.

2 Commencement

This Regulation commences on 30 April 2018 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Children (Criminal Proceedings) Regulation 2016

Clause 6A

Insert after clause 6:

6A Explanations to accused persons in committal proceedings

- (1) The Magistrate must give the accused person an oral and a written explanation in or to the effect of the forms set out in this clause before the commencement of committal proceedings under Division 3A of Part 3 of the Act.

- (2) The form of the oral explanation is as follows:

Purpose of proceedings

You have heard the prosecution's case against you.

Since then the prosecutor may have given you or your lawyer copies of more witness statements.

I now have to decide if your case is to go to trial or not. I decide this by looking at all the evidence. You will also be given a written explanation with more details about this process.

Next steps

You can ask me to call any of the witnesses who gave a written statement to come to court to give their evidence. If you do not ask for a witness to come to court to give evidence, their written statement will be their only evidence.

You can also give your own evidence to the court. You do not have to say anything unless you want to. But if you do say something, it may be recorded and used against you if your case goes to trial. You should talk to your lawyer about what to do.

If someone told you that you will be treated better if you plead guilty, that may not happen. Even if there has been any kind of threat or promise to you, anything you say now may still be used against you if your case goes to trial.

Is there anything I have said you do not understand?

Do you want to say anything in answer to what you are charged with?

Do you want to give any evidence in relation to the charge?

If accused person not represented by legal practitioner

You have the right to get legal representation or legal advice about your case, or both. This is available from Legal Aid NSW. I can grant you an adjournment to find out more about this.

Do you wish to ask me any questions about anything I have said?

Do you want me to adjourn the case so you can ask for help from Legal Aid NSW or another lawyer?

- (3) The form of the written explanation is to be as follows:

Purpose of proceedings

This form has been given to you because you are facing criminal charges in a committal proceeding. A committal proceeding is when a Magistrate decides if the prosecution has enough evidence for your case to go to trial.

You heard the prosecution's case against you.

Since then the prosecutor may have given you copies of some more witness statements.

A Magistrate now has to decide if your case should go to trial or should not go ahead. The Magistrate will decide this by looking at all the evidence heard in court and in witness statements.

Next steps

You can ask a Magistrate to call any of the witnesses who gave a written statement to come to court to give evidence in the committal proceedings.

If you ask for this, there may be a hearing to decide if this should happen. You may need to tell the Magistrate why this should happen.

If the Magistrate calls a witness to come to court to give evidence, you can ask the witness questions about what they said in their statement.

If you do not ask for a witness to come to court to give evidence, their written statement will be their only evidence.

You can also give your own evidence to the court or call your own witnesses. Before you say anything, you should know that you do not have to say anything unless you want to. Also, if you do say something, it may be recorded and used against you if your case goes to trial.

If accused person not represented by legal practitioner

You have the right to get legal representation or advice about your case. If you want to get legal help you can ask a Magistrate to adjourn your case. This means your case will be put on hold so you can ask for help from Legal Aid NSW or another lawyer.